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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 92-141
1992 Annual Access Tariff Filings)

OPPOSITION OF THE
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

ORIGINAL
FILE

Pursuant to Section 1.115(d) of the Commission's Rules, 47 C.F.R. § 1.115(d), American Telephone and Telegraph Company ("AT&T") opposes the Application for Partial Review filed by the Ameritech Operating Companies of the Common Carrier Bureau's Annual Access Order,* which required Ameritech to allocate its overall interstate price cap sharing amount based on relative basket revenues and prohibiting use of basket-specific earnings as an allocator.** Ameritech's Application is both legally and factually deficient, and should be denied.

The Commission's LEC Price Cap Order requires those carriers to share with ratepayers the LECs' earnings in excess of certain maximum thresholds through downward

* 1992 Annual Access Tariff Filings, CC Docket No. 92-141, Memorandum Opinion and Order, DA 92-841, released June 22, 1992 (the "Annual Access Order").

** Ameritech also filed a request for stay of the Annual Access Order, which was denied by the Bureau on the ground, inter alia, that Ameritech's Application is unlikely to prevail on the merits. Ameritech Operating Companies 1992 Annual Access Tariff Filing, Motion for Stay, CC Docket 92-141, Order, DA 92-85, released June 26, 1992, ¶ 5 ("Stay Order").

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adjustments, implemented "on a cost-causative basis," to their price cap indices.* In its 1992 annual tariff filing, Ameritech purported to comply with this obligation by allocating its entire \$18.2 million sharing amount to its Special Access and Interexchange basket indices, purportedly because only those two baskets' earnings had exceeded the Commission's earnings threshold for sharing.

The Annual Access Order recognized, however, that the LEC price cap plan had rejected a sharing requirement based on basket-level earnings, and found that Ameritech's approach "cannot [be] reconcile[d] with the Commission's explicit decision not to adopt basket-by-basket sharing".** The Bureau also concluded (id., ¶ 6) that "it is more consistent [with the Commission's price cap plan] to share the benefits of increased productivity

* Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd. 6786, 6801-6806 (¶¶ 120-126) (1990) ("LEC Price Cap Order"), recon. denied, 6 FCC Rcd. 2637 (1991) ("LEC Price Cap Reconsideration Order"), petition for review pending sub nom, D.C. Pub. Serv. Comm'n v. FCC, No. 91-1279 (D.C. Cir., filed June 14, 1991); 47 C.F.R. § 61.45(d)(2). Specifically, LECs that have elected a productivity offset of 3.3 percent are required to share 50 percent of their earnings between 12.25 percent and 16.25 percent in the base period, and all other earnings above the latter threshold. Carriers that elect a 4.3 percent productivity offset may retain 50 percent of their earnings between 13.25 percent and 17.25 percent, before being required to return all earnings above that level. See, LEC Price Cap Order, 5 FCC Rcd. at 6801-6802 (¶¶ 124-126).

** Annual Access Order at ¶ 7, citing LEC Price Cap Order, 5 FCC Rcd. at 6805 (¶ 151) and LEC Price Cap Reconsideration Order, 6 FCC Rcd. at 2679 (¶ 92).

across all baskets, [rather] than to apportion those benefits on the basis of relative basket earnings" Accordingly, the Bureau directed Ameritech to revise its filing by allocating the sharing adjustment among price cap baskets in the proportion that the revenue in each basket bears to Ameritech's total interstate revenues. Id.

Ameritech acknowledges (Application, p. 1) that the Annual Access Order "is correct and completely in line with the philosophy of price caps." In addition, Ameritech concedes (id.) that "under price caps, basket-specific costs and basket-specific earnings should not form the basis for any Commission decision or regulation." Ameritech nevertheless contends that the Commission's decision to include the Interexchange basket in the LECs' price cap sharing obligation "introduced a distortion into the price cap mechanism" that "left the door open to the implementation of a[n] [alternative] sharing mechanism." Id., p. 3. Thus, Ameritech reasons that it should be permitted to implement "[a] basket-earnings based allocation of the overall interstate sharing amount" which will allegedly "mitigat[e] the distortion" by flowing back to interexchange customers a proportionate share of their "contributions" to the sharing amount. Id., p. 6.

These arguments were raised by Ameritech previously, and were addressed and correctly rejected by the Bureau in the Annual Access Order.^{*} As the Application concedes (pp. 2-3 and Attachment A), on reconsideration in the LEC price cap proceeding Ameritech contended unsuccessfully that the Interexchange basket should be excluded from the computation of the sharing obligation. Nothing in the LEC Price Cap Reconsideration Order supports Ameritech's current argument that the Commission's action "distorted" the sharing obligation, or that by including the Interexchange basket in sharing the Commission thereby sanctioned allocation using basket-level earnings.^{**} As the Bureau correctly recognized in the Stay Order (§ 5), Ameritech's present claim "simply re-argues a rulemaking decision that is now final" and should be dismissed.

Even apart from its untimeliness, moreover, Ameritech's request to allocate the sharing amount based on basket-specific earnings (Application, p. 4) also

^{*} Indeed, Ameritech's petition largely recasts the identical claims and language of its arguments before the Bureau which the Annual Access Order found lacking in merit. Compare Application, pp. 2-6 with id., Exhibit B (attaching Ameritech's response to petitions on its annual access tariff filing.)

^{**} To the contrary, the Commission expressly adhered in that decision to its prior rejection of a basket-by-basket sharing approach in the LEC Price Cap Order. See LEC Price Cap Reconsideration Order, 6 FCC Rcd. at 2679 (§ 92), citing LEC Price Cap Order, 5 FCC Rcd. at 6805 (§ 151).

cannot be squared with its own stated rationale for apportioning its sharing obligation. In the LEC price cap proceeding, Ameritech itself acknowledged that because "the allocation of joint and common costs is necessarily arbitrary, therefore the earnings results based on those allocations are necessarily arbitrary."* Ameritech also recognized there that differing basket level returns are not causally connected to those services because "the Commission has correctly observed that 'category returns' which reflect the results of its distributed costs (FDC) methodology do not provide economically meaningful results."**

In light of these admissions, there is no basis for Ameritech now to contend that its sharing obligation should be specifically attributed to the "earnings" of the Special Access and Interexchange baskets, and flowed through solely to those baskets' price cap indices. Rather, as the Bureau correctly found in the Annual Access Order (¶¶ 6-7), the sharing obligation should be allocated in proportion to basket revenues, to implement a "unified approach" reflecting these services' overall contribution to the LEC's productivity gains.

* See Ameritech Opposition to LEC Price Cap Order Petitions for Reconsideration, filed December 21, 1990 in Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, p. 14 (footnote omitted).

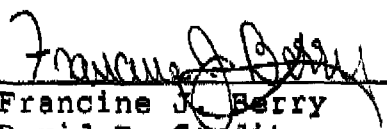
** Id., at 15 (footnote omitted).

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WHEREFORE, for the reasons stated above and in
the Bureau's Annual Access Order and Stay Order,
Ameritech's Application for Partial Review should be
denied.

Respectfully submitted,
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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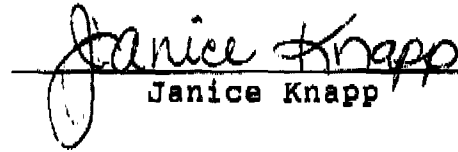
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July 8, 1992

CERTIFICATE OF SERVICE

I, Janice Knapp, do hereby certify that a true copy of the Opposition of American Telephone and Telegraph Company was served this 8th day of July, 1992, by United States mail, first class, postage prepaid, upon the parties listed on the attached list.


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